

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: ASBESTOS PRODUCTS LIABILITY
LITIGATION (NO. VI)

4:11-3399

MDL No. 875

(SEE ATTACHED SCHEDULE)

CONDITIONAL REMAND ORDER

The transferee court in this litigation has, in the actions on this conditional remand order: (1) severed all claims for punitive or exemplary damages; and (2) advised the Panel that coordinated or consolidated pretrial proceedings with respect to the remaining claims have been completed and that remand to the transferor court(s), as provided in 28 U.S.C. §1407(a), is appropriate.

IT IS THEREFORE ORDERED that all claims in the action(s) on this conditional remand order except the severed damages claims be remanded to its/their respective transferor court(s).

IT IS ALSO ORDERED that, pursuant to Rule 10.2 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, the transmittal of this order to the transferee clerk for filing shall be stayed 7 days from the date of this order. If any party files a notice of opposition with the Clerk of the Panel within this 7-day period, the stay will be continued until further order of the Panel. This order does not become effective until it is filed in the office of the Clerk for the United States District Court for the Eastern District of Pennsylvania.

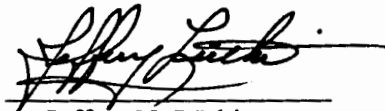
IT IS FURTHER ORDERED that, pursuant to Rule 10.4(a), the parties shall furnish the Clerk for the Eastern District of Pennsylvania with a stipulation or designation of the contents of the record to be remanded and all necessary copies of any pleadings or other matter filed so as to enable said Clerk to comply with the order of remand.

Inasmuch as no objection is
pending at this time, the
stay is lifted.

Jan 28, 2013

CLERK'S OFFICE
UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FOR THE PANEL:



Jeffery N. Lüthi
Clerk of the Panel

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATED:

1/29/2013

ATTEST:


DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**IN RE: ASBESTOS PRODUCTS LIABILITY
LITIGATION (NO. VI)**

MDL No. 875

SCHEDULE FOR CRO

TRANSFeree			TRANSFEROR			CASE CAPTION
DIST	DIV.	C.A.NO.	DIST	DIV.	C.A.NO.	
PAE	2	11-64219	CAN	3	11-00986	Whelan et al v. General Electric Company et al
PAE	2	11-67271	CAN	3	11-03507	Gerecke et al v. Huntington Ingalls Incorporated et al
PAE	2	09-62999	CAN	4	07-04240	LYMAN et al v. UNION CARBIDE CORPORATION et al
PAE	2	11-67274	CAN	4	11-03399	McClain et al v. United States Steel Corporation et al
PAE	2	11-63477	ND	1	11-00017	THOMAS v. ABEX CORPORATION et al
PAE	2	09-66670	ND	1	90-00289	SKAGER v. A.H. BENNETT COMPANY et al
PAE	2	09-66671	ND	1	90-00290	STIMAC v. A.H. BENNETT COMPANY et al
PAE	2	09-66672	ND	1	90-00291	STUMPF v. A.H. BENNETT COMPANY et al
PAE	2	09-66673	ND	1	90-00292	SULLIVAN v. A.H. BENNETT COMPANY et al
PAE	2	09-66674	ND	1	90-00293	SUNDBY v. A.H. BENNETT COMPANY et al
PAE	2	09-66675	ND	1	90-00294	TOEPKE v. A.H. BENNETT COMPANY et al
PAE	2	09-66676	ND	1	90-00295	VOEGELE v. A.H. BENNETT COMPANY et al
PAE	2	09-66677	ND	1	90-00296	WARD v. A.H. BENNETT COMPANY et al
PAE	2	09-66678	ND	1	90-00297	WIRTZ v. A.H. BENNETT COMPANY et al
PAE	2	09-66679	ND	1	90-00298	WOODS v. A.H. BENNETT COMPANY et al
PAE	2	09-66680	ND	1	90-00299	ZACHMEIER v. A.H. BENNETT COMPANY et al
PAE	2	09-66681	ND	1	90-00300	ZACHMEIER v. A.H. BENNETT COMPANY et al
PAE	2	09-66682	ND	1	90-00301	ZACHMEIER v. A.H. BENNETT COMPANY et al
PAE	2	09-66683	ND	1	90-00302	ZOLLER v. A.H. BENNETT COMPANY et al
* PAE	2	09-64060	CAN	3	08-04461	Robert Mcmeans v. General Electric Co., et al.

* – denotes that the civil action has been severed.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS : Consolidated Under
LIABILITY LITIGATION (No. VI) : MDL DOCKET NO. 875
:
McCLAIN : **FILED** : Transferred from the Northern
:
v. : JAN - 7 2013 : District of California,
:
MICHAEL E. KUNZ, Clerk : Case No. 11-03399
By Dep. Clerk :
UNITED STATES STEEL CORP. : E.D. PA No. 2:11-cv-67274
et al. : _____

SUGGESTION OF REMAND

AND NOW, this **4th** day of **January, 2013**, it is hereby
ORDERED that, upon review of the above captioned case under MDL-
875 Administrative Order No. 18, No. 01-875 (E.D. Pa. April 30,
2009), ECF No. 6197, the Court finds that, as to the above-
captioned case:

- a.) Plaintiff has complied with MDL-875 Administrative
Orders 12 and 12A (see the MDL 875 website's Administrative
Orders page, at <http://www.paed.uscourts.gov/mdl875d.asp>).
- b.) Parties have completed their obligations under the Rule
16 order issued by the Court (see ECF No. 9).
- c.) All discovery has been completed.
- d.) The Court has adjudicated all outstanding motions,
including dispositive motions. Particularly relevant rulings
include:
 - i. The motion for summary judgment of defendant

General Dynamics Corp. was denied (ECF No. 29).

e.) Rule 18 settlement discussions have been exhausted at this time as to the remaining viable defendants.

f.) The Court finds that this case is prepared for trial without delay once on the transferor court's docket, subject to any trial-related motions in limine (including Daubert challenges).

g.) According to Plaintiffs, the remaining viable Defendants for trial are:

i. General Dynamics Corp.

h.) Any demand for punitive damages is severed, and claims for punitive or exemplary damages are retained by the MDL-875 Court. See Fed. R. Civ. P. 42(b).

Accordingly, the Court **SUGGESTS** that the above-captioned case should be **REMANDED** to the United States District Court for the **Northern District of California** for resolution of all matters pending within this case except punitive damages.¹

¹ The Court finds that the issue of punitive damages must be resolved at a future date with regard to the entire MDL-875 action, and therefore any claims for punitive or exemplary damages are hereby **SEVERED** from this case and retained by the MDL-875 Court in the Eastern District of Pennsylvania. See In re Collins, 233 F.3d 809, 810 (3d Cir. 2000) ("It is responsible public policy to give priority to compensatory claims over exemplary punitive damage windfalls; this prudent conservation more than vindicates the Panel's decision to withhold punitive damage claims on remand."); see also In re Roberts, 178 F.3d 181 (3d Cir. 1999).

Alternatively, parties in the below-listed cases have **seven (7) days** within which to consent to a trial before an Article III or Magistrate Judge in the Eastern District of Pennsylvania. In such an event, if consent is granted, a trial will be scheduled within sixty (60) days, on a date convenient to the parties in Philadelphia, Pennsylvania, and the Suggestion of Remand will be vacated.

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

SUGGESTION OF REMAND MEMORANDUM

Updated September 5, 2012

To: Transferor Judge

From: Judge Eduardo C. Robreno, Presiding Judicial Officer, MDL 875

Re: Asbestos case that has been transferred to your court

Status of the case that has been transferred from the Eastern District of Pennsylvania

This case has been transferred back to the transferor court, from the MDL 875 Court in the Eastern District of Pennsylvania.

Cases that are remanded to transferor courts are ordinarily ready for trial, pursuant to this Court's Administrative Order No. 18 (see <http://www.paed.uscourts.gov/mdl875d.asp>).

Specific information regarding the history of a specific case while it was in the MDL 875 Court can be found in the Suggestion of Remand (above) that the MDL Court submitted to the Judicial Panel on Multidistrict Litigation in connection with its Order.

History of MDL 875, In re: Asbestos Products Liability Litigation

MDL 875, In re: Asbestos Products Liability Litigation, involves issues relating to personal injury damages caused by asbestos products. It currently consists of about 6,000 cases transferred by the Judicial Panel on Multidistrict Litigation, which has been transferring cases to the Eastern District of Pennsylvania since 1991. Each case typically consists of claims by multiple plaintiffs against multiple defendants. Since its inception, the litigation has involved more than 100,000 cases and up to ten million claims, including land-based and maritime claims ("MARDOC").

Beginning with Administrative Order No. 12 (see <http://www.paed.uscourts.gov/mdl875d.asp>) in 2008, the Court initiated an aggressive, pro-active policy to facilitate the processing of cases. The policy involves giving newly transferred cases scheduling orders; setting cases for settlement conferences; having motion hearings; and remanding trial-ready cases to transferor courts, or, in the alternative, holding trials in the Eastern District of Pennsylvania (if so requested by the parties).

Resources available for transferor courts on the MDL 875 website

More information about the history of MDL 875 can be found on the Eastern District of Pennsylvania's MDL 875 website at <http://www.paed.uscourts.gov/mdl875a.asp>. Additionally, all Administrative Orders issued in this litigation (including current Orders and those no longer in effect) can be found at <http://www.paed.uscourts.gov/mdl875d.asp>.

Also on the website is an Excel spreadsheet of all decisions issued by the Presiding Officer on

substantive and procedural matters since 2008 (see <http://www.paed.uscourts.gov/mdl875n.asp>). This spreadsheet is updated regularly, and it can be sorted by jurisdiction, case caption, subject matter, party name, etc. It is also word searchable. The MDL-875 Court intends this spreadsheet to be a helpful resource for transferor courts addressing issues similar to those already addressed by the MDL-875 Court.

Other options available to assist the Transferor Court with legal research include searchable databases created by LexisNexis and Westlaw. Directions on how to access these databases can be found on <http://www.paed.uscourts.gov/mdl875n.asp>.

Contact information for the MDL 875 Court

The MDL 875 Court is ready, willing and able to assist the transferor court with any matters relating to the transfer of the case or any substantive or procedural issues that may arise.

You may contact the Presiding Judicial Officer (Judge_Eduardo_Robreno@paed.uscourts.gov), the MDL 875 law clerk (Michele_Ventura@paed.uscourts.gov or (267) 299-7422), or the Clerk's Office ((267) 299-7012) for further assistance.

Intercircuit Assignment Committee

The Intercircuit Assignment Committee of the Judicial Conference, under the leadership of Judge J. Frederick Motz of the District of Maryland, can assist in the identification and assignment of a senior judge from another District who is ready, willing and able to preside over the trial of this case. If appropriate, please contact Judge Motz at Judge_J_Frederick_Motz@mdd.uscourts.gov or (410) 962-0782.